

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BRIAN W. SEXTON,

Plaintiff,

v

Case No.
Hon.

PANEL PROCESSING, INC.,
a Michigan corporation, and
PANEL PROCESSING OF
COLDWATER, INC.

Defendants.

ISACKSON, WALLACE & PFEIFER, P.C.
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BODMAN PLC
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NOTICE OF REMOVAL (BASED ON FEDERAL QUESTION)

Defendants Panel Processing, Inc. and Panel Processing of Coldwater, Inc. (collectively "Panel"), by filing this Notice of Removal, removes this action from the 26th Judicial Circuit Court of Michigan to the United States District Court for the Eastern District of Michigan, Northern Division. In support of this removal, Panel states as follows:

1. Removal is proper under 28 U.S.C. § 1441(a) and (b) because this Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, Federal Question.

2. Plaintiff filed this action in the 26th Judicial Circuit Court of Michigan on January 26, 2012. This action was given case number 12-4560-CD. A copy of the Summons and Complaint is attached (EX 1).

3. Through counsel, Defendants acknowledged receipt of a copy of the Summons and Complaint by mail on February 10, 2012.

4. Plaintiff is a former employee of Panel Processing of Coldwater, Inc. Plaintiff alleges that he was discharged in violation of Michigan's Whistleblower Protection Act ("WPA") because he was about to report violations of the Employee Retirement Income Security Act ("ERISA") of 1974, 29 U.S.C. 1001, et. seq., pertaining to an Employee Stock Ownership Plan ("ESOP").

5. The above-described case is a civil action of which the Court has original jurisdiction under the complete preemption doctrine. Under the complete preemption doctrine, "Once an area of state law has been completely preempted, any claim purportedly based on that preempted state law is considered, from its inception, a federal claim and therefore arises under federal law." *Caterpillar, Inc., v. Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425 (1987). Complete preemption applies here because "ERISA preempts expressly 'any and all State laws insofar as they may now or hereafter relate to any benefit plan.'" *Authier v. Ginsberg*, 757 F.2d 796, 798 (6th Cir. 1985)(citing 29 U.S.C. § 1144(a))(emphasis added by the court). In this case, Plaintiff alleges he was discharged because he was a whistleblower that was about to report a violation of ERISA concerning the ESOP to a governmental body. Thus, Plaintiff's claims relate to the ERISA benefit plan. *McSharry v Unumprovident Corp.*, 237 F.Supp.2d 875, 880-881 (E.D. Tenn. 2002)(finding that ERISA completely preempts state law, approved removal of a state whistleblower claim). Accordingly, this Court has jurisdiction over this Complaint.

6. Removal is timely under 28 U.S.C. § 1446(b) because this Notice of Removal is filed within thirty (30) days of notice to Panel of the pendency of this action, and within thirty (30) days after the date of service of the Summons and Complaint on Panel.

7. Panel is attaching copies of all process, pleadings, orders, and other papers in this action pursuant to 28 U.S.C. § 1446(a).

8. Panel is filing a copy of this Notice of Removal with the 26th Judicial Circuit Court, as required by 28 U.S.C. § 1446(d), and with Plaintiff (EX 2).

BODMAN PLC

By: /s/Donald H. Scharg
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Dated: March 1, 2012

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system.

and

I hereby certify that on March 1, 2012, I have mailed by United States Postal Service the foregoing paper to the following:

William A. Pfeifer
Isackson, Wallace & Pfeifer, P.C.
114 South Second Avenue
Alpena, MI 49707

BODMAN PLC

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